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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

12 DEBORAH J. THOMAS

No. CV 07-04392 CW

13 Plaintiff,

**PLAINTIFF'S OBJECTIONS TO
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE RE MOTION TO
DISMISS**

14 vs.

15 THE WALT DISNEY COMPANY, WALT
16 DISNEY STUDIOS, DISNEY PRESS,
17 PIXAR ANIMATION STUDIOS, WALT
18 DISNEY FEATURE ANIMATION, WALT
19 DISNEY PICTURES, DISNEY
20 ENTERPRISES, INC. and DOES 1
through 100, Inclusive,

Date: November 1, 2007
Time: 2:00 p.m.
Judge: Hon. Claudia Wilken
Courtroom: #2, 4th Floor

21 Defendants.
22 _____ /

23 Plaintiff Deborah Thomas ("Thomas") hereby objects to Defendants' Request for
24 Judicial Notice on grounds that the purported facts are subject to reasonable dispute, are
25 not generally known within the territorial jurisdiction of the trial court, and are not capable
26 of accurate and ready determination. Fed. R. Evid. 201(b).

27 Specifically, the following facts cannot be judicially noticed.

28 1. Defendants request the Court to take judicial notice that its motion picture,
"Finding Nemo" was "shown before May 30, 2003, as reported in Exhibits D-G to the
Declaration of Andrea Pallios Roberts." First, it is unclear what "fact" is being asserted

1 here. It is unclear whether Defendants contend that the movie was shown to the general
2 public prior to May 30, 2003 or that it was shown to a select few individuals. It is unclear
3 where or to whom the motion picture was shown. Second, whether the movie was shown to
4 the public prior to May 30, 2003, is subject to reasonable dispute, not generally known, and
5 is not capable of accurate determination by resort to sources whose accuracy cannot
6 reasonably be questioned. The articles in Exhibits D-G to the Declaration of Andrea
7 Pallios Roberts ("Roberts") do not establish the fact asserted. Thus, it is not capable of
8 accurate determination based on the Exhibits as sources. *See* Fed. R. Evid. 201(b).

9 2. Defendants fail to satisfy the requirements of Fed. R. Evid. 201(b), in arguing
10 that "'Finding Nemo'" and its general plot, story line and characters, was publicized before
11 its May 30, 2003 general release." This is not a fact at all, but rather, an opinion.
12 Defendants' opinion is subject to reasonable dispute. Moreover, it is not generally known,
13 and is not capable of accurate determination by resort to sources whose accuracy cannot
14 reasonably be questioned. Exhibits A-L of the Roberts declaration do not support the fact
15 asserted. The exhibits refer to the release of the movie, "Finding Nemo" but do not
16 necessarily publicize its general plot, story line, and characters. Thus, the Court cannot
17 take judicial notice of this purported fact.

18 3. Defendants contention that the movie, "Finding Nemo" was advertised in
19 trailers preceding other movies and in television commercials in advance of its general
20 release is subject to dispute, not generally known, and is not capable of accurate
21 determination by resort to sources whose accuracy cannot reasonably be questioned.

22 4 Plaintiff disputes that it was "publicized" that Defendants would develop video
23 games based on the film. Also, this purported fact is not generally known, and is not
24 capable of accurate determination by resort to sources whose accuracy cannot reasonably
25 be questioned. Exhibits J and K, print-outs from a website, are not sources whose accuracy
26 cannot reasonably be questioned.

27 5. Plaintiff disputes that "[b]efore the May 30, 2003 release of the film,
28 'Finding Nemo,' Defendants publicized that they planned an extensive marketing campaign
in connection with the film, as reported in Exhibit K to the Roberts Declaration." This is

1 not a "fact" generally known, and is not capable of accurate determination by resort to
2 sources whose accuracy cannot reasonably be questioned. Again, Exhibit K, a print-out of a
3 website, is not a source without question.

4 6. Defendants request the Court generally to take judicial notice of all of the
5 exhibits attached to the Roberts Declaration, Exhibits A through I, and presumably the
6 content within each article. Plaintiff objects. Although Roberts avers that she printed the
7 articles, the content contained in the articles does not necessarily support the disputed
8 facts asserted and is subject to varying interpretation. Also, the exhibits are not a source
9 whose accuracy cannot reasonably be questioned. *See e.g. In re Avista Corp. Securities*
10 *Litigation*, 415 F.Supp.2d 1214, 1217-1218 (E.D. Wash. 2005)(courts may only take
11 judicial notice of adjudicative facts that are not subject to reasonable dispute).

12
13 Dated: October 11, 2007

14 ROBINSON & WOOD, INC.

15
16 /s/

17 By
18 ARCHIE S. ROBINSON
19 Attorneys for Plaintiff
20 DEBORAH J. THOMAS

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